SINGLE BENCH

(6)

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (SERVICE) NO. 4541 OF 2006

PETITIONER : **SURENDRA SINGH BHADORIA**
Age about 50 Years, S/o Shri Kripal Singh Bhadoria, R/o Quarter No. 1/B -40, Kirandul, District : South Bastar, Dantewada (C.G.)

P.R. No. 4174/6
Presented by Shri Yogesh Pandey
dated 2/8/06

VERSUS

RESPONDENTS :
1. NATIONAL MINERAL DEVELOPMENT CORPORATION LIMITED, Head Office – Hyderabad Mazab (Masab) Tank, Castle Hill, Hyderabad (Andhra Pradesh).

2. The General Manager, N. M. D. C. Bailadila Iron Ore Project, Deposit No. 14, Kirandul, District South Bastar, Dantewada, (C.G.)

3. Director (Prd.), National Mineral D. C. Ltd, Massab Tank Hyderabad. (Appellate Authority)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

A.E.R. 80

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition (Service) No.4541 of 2006

Surendra Singh Bhadoria

-Versus-

National Mineral Development Corporation Limited and two others

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POST FOR ORDER ON 4TH SEPTEMBER, 2006

Sd/-
L.C. Bhadoo
Judge

(81)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition (Service) No.4541 of 2006

Surendra Singh Bhadoria

- Versus -

National Mineral Development Corporation Limited and two others

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Present: -

Mr. Yogesh Pandey, Advocate: For the petitioner.

O R D E R

(Passed on 4th September, 2006)

L.C. BHADOO, J.

1. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the legality of the order dated 12-12-2004 (Annexure P-1) passed by respondent No.2, the General Manager, National Mineral Development Corporation Limited, Kirandul, whereby respondent No.2 has imposed a penalty of dismissal from service on the petitioner and further disqualified the petitioner for future employment, as also of the order dated 20-10-2005 (Annexure P-2), whereby the appellate authority dismissed the appeal of the petitioner.

2. Brief facts leading to filing of this writ petition are that the petitioner has joined the services under respondent No.2 in the year 1980 and in due course of time he reached to the post of Mechanic-cum-Operator Grade-II. On 16-3-2003, the petitioner & Junior Manager Screen Plant-II Mr. S.C. Gupta were on duty in third shift. Mr. Gupta was in-charge of shift and during the course of duty, the petitioner herein assaulted Mr. S.C. Gupta for which Mr. Gupta made a written complaint which led to suspension of the petitioner on the same day. Disciplinary proceeding was instituted against the petitioner to enquire into the alleged misconduct of the petitioner who indulged in beating Junior Manager Mr. S.C. Gupta. The enquiry officer after conducting enquiry in accordance with the procedure reached to the conclusion that the charge levelled against the petitioner regarding misconduct stand proved. The disciplinary authority (the General Manager - respondent No.2) vide the

impugned order dated 12-12-2004 dismissed the petitioner from service against which the petitioner preferred an appeal, however the same was also dismissed by the appellate authority vide order dated 20-10-2005.

3. It is not out of place to mention here that relating to the same incident first information report was lodged in Police Station: Kirandul, where after investigation, charge sheet was filed against the petitioner for commission of offence under Section 323 of the I.P.C. in the Court of Judicial Magistrate, Dantewada. Learned Magistrate convicted the petitioner for the said offence. However, he was given the benefit of probation instead of sentencing him immediately.

4. I have heard learned counsel for the petitioner, on admission.

5. Learned counsel for the petitioner argued that apart from the evidence of Mr. S.C. Gupta before the enquiry officer, no other independent witness was produced by the Department in order to establish charge against the petitioner, therefore, merely on the basis of the evidence of Mr. S.C. Gupta, the complainant, the decision of the enquiry officer to hold the petitioner guilty for the alleged misconduct is illegal. Hence, the impugned order requires to be quashed, as the same is based on insufficient evidence regarding the misconduct of the petitioner. The second argument of learned counsel is that the penalty of dismissal from service imposed upon the petitioner is disproportionate to the misconduct alleged against him.

6. Having heard learned counsel for the petitioner, I have perused the record. Law regarding the power of judicial review of the High Court against the order passed by the disciplinary authority in departmental enquiry is no longer *res integra* and well settled by the catena of judgments of the Apex Court.

7. It is the satisfaction of the disciplinary authority/appellate authority, based on the evidence and material available on record, to reach to the conclusion as to whether the charge of misconduct has been proved. They are the sole judges of facts. The High Court while exercising the power of judicial review against the order of the disciplinary authority/appellate authority cannot act as an appellate authority and re-appreciate the evidence, and cannot look upon the proof of sufficiency of evidence. The High Court while exercising the

power of judicial review can certainly interfere with the order if the same is based on no evidence, the principles of natural justice have been violated and can review the manner in which the decision was made and that the officer conducted the enquiry was not competent to do so. The technical rules of Evidence Act have no application in the matter of departmental enquiries. Principle of preponderance of probabilities and some materials on record have to be applied. I am fortified in my view by the following judgments of the Apex Court.

8. In the matter of **B.C. Chaturvedi vs. Union of India and others** reported in **(1995) 6 SCC 749**, the Apex Court held that the High Court while exercising judicial review cannot take his decision as Court of appeal but certainly can review the manner in which the decision was made. The scope of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But the finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. When the authority accepts the evidence and the conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of

(84)

inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding.

9. In the matter of **State of Rajasthan vs. B.K. Meena and others** reported in **JT 1996 (8) SC 684**, the Apex Court has held that

> "in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some materials on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct".

Again in the matter of **Lalit Popli vs. Canara Bank and others** reported in **JT 2003 (5) SC 494**, the Apex Court has held that

> "While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority".

10. In the matter of **R.S. Saini vs. State of Punjab and others** reported in **JT 1999 (6) SC 507**, in paragraph 16, the Apex Court has held that

> "Before adverting to the first contention appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

11. Based on the above principle, if we look into the order impugned as well as the evidence adduced before the enquiry officer, the evidence of Mr. S.C. Gupta shows that on 16-3-2003 when Mr. S.C. Gupta along with the petitioner were on duty, Mr. S.C. Gupta asked the petitioner that as and when the Screen stopped functioning, the side water valve be closed because there should not

be wastage of water. On hearing this, the petitioner became furious, started abusing Mr. Gupta, assaulted him with fist on right side of the face. Mr. Gupta immediately reported the matter to Deputy Manager Mr. M.P. Reddy over telephone. Mr. M.P. Reddy, who has been examined by the enquiry officer has corroborated the above evidence and stated that Mr. Gupta informed him about the incident when he was at his residence, when he was about to leave for the Plant after hearing about the incident, he received another telephone call from Mr. Gupta that the petitioner has again assaulted him. When he reached the Office, he saw that Mr. Gupta all alone was sitting in the Office, he was not in a position to speak and his cheek was in swollen condition. Mr. M.P. Reddy immediately reported the matter to the Deputy General Manager (Mechanical). On the next day, the matter was reported to Police Station: Kirandul where the case was registered and charge sheet was filed against the petitioner in which he was held guilty. Mr. Gupta was medically examined and the injury was found on his body. Other persons who were examined by the petitioner in defence have simply stated that they are not aware about the incident. They have not stated that no such incident was happened.

12. Therefore, it cannot be said that the finding of the inquiry officer and the disciplinary authority holding the petitioner guilty for misconduct is based on no evidence or any principles of natural justice have been violated while conducting the enquiry. In the present case, there was ample evidence to reach to the conclusion that the misconduct of the petitioner stands proved, as such, the argument advanced by learned counsel for the petitioner that the finding of the enquiry officer and the disciplinary authority is perverse, is without merit.

13. Now, coming to the second point that the punishment of dismissal from service imposed upon the petitioner is disproportionate to the misconduct levelled against the petitioner, regarding proportionality of punishment, law is well settled. It is for the disciplinary authority/appellate authority to take decision, looking to the magnitude and gravity of misconduct, as to which is the befitting punishment to be imposed upon the delinquent officer commensurate with the misconduct in order to maintain discipline of the

Office. The power of interference with the quantum of punishment is extremely limited. The Court can interfere with the punishment imposed on the delinquent officer only when it reaches to the reasoned conclusion that looking to the facts and circumstances of the case and the alleged misconduct of the petitioner, the punishment is disproportionate to the misconduct which shocks the conscience of the Court. The punishment is unduly harsh or vindictive, irrational or perverse and is not stood up to the test of doctrine of proportionality. I am fortified in my view by the judgment of the Apex Court in the matter of **B.C. Chaturvedi (supra)**, in which the Apex Court has held that

> "the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

14. Similarly, in the matter of **Chairman and Managing Director, United Commercial Bank and others** vs. **P.C. Kakkar** reported in **JT 2003 (2) SC 78**, the Apex Court has held that

> "Quantum of punishment and the question of proportionality - Power of court to interfere in the matter of punishment - Disciplinary proceedings against the respondent bank officer - On charges being found to have been established, bank dispensing with the services - Respondent failing before the appellate authority as also on review - the court finds that a punishment is shockingly disproportionate it must record reasons for coming to such a conclusion and mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Further the charges against the respondent not being casual in nature but being serious, the High Court was not justified in interfering with the quantum of punishment."

The Court held that "the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was

shocking to the conscience of the court. The court should not substitute its decision to that of the administrator."

15. If we look into the facts of the present case, when the petitioner along with Mr. S.C. Gupta, Officer of the petitioner, was on duty, Mr. Gupta asked the petitioner to perform certain duty on which without any rhyme or reason, the petitioner attacked Mr. Gupta with fist on his face as a result of which Mr. Gupta received injury and when he telephoned to Mr. M.P. Reddy, the petitioner again assaulted Mr. Gupta as to why he has reported the matter to Mr. Reddy over telephone. This misconduct of the petitioner was required to be dealt with sternly, as in order to maintain discipline, decorum and dignity of the Office, such persons must be dealt with severe punishment. If such persons are allowed to continue in the Office by imposing lesser punishment, then discipline of the Office is bound to be destroyed and it may not be possible for any person to take work from subordinates and there will be chaos in the Office. Beating a senior officer while on duty in the Office itself is a serious and grave misconduct and that is why criminal case was also lodged against the petitioner, as such, I am of the considered opinion that looking to the misconduct of the petitioner, the punishment of dismissal from service is in no way disproportionate to the misconduct of the petitioner. Therefore, there is no force in the argument of learned counsel for the petitioner that the punishment imposed upon the petitioner is disproportionate to the misconduct. No other point was confessed or argued before the Court by learned counsel for the petitioner.

16. In the circumstances, the writ petition being devoid of merit is liable to be dismissed and therefore it is hereby dismissed, at the admission stage itself without costs.

Sd/-
L.C. Bhadoo
Judge

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